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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1976

**No. 76-811**

THE REGENTS OF THE UNIVERSITY OF CALIFORNIA,
*Petitioner,*

v.

ALLAN BAKKE, *Respondent*

**On Writ of Certiorari to the Supreme Court of the State of California**

## BRIEF OF AMICI CURIAE

**MEXICAN AMERICAN LEGAL DEFENSE AND EDUCATIONAL FUND, LA RAZA NATIONAL LAWYERS ASSN., COUNTY OF SANTA CLARA, CALIF., LEAGUE OF UNITED LATIN AMERICAN CITIZENS, G.I. FORUM, NATIONAL COUNCIL OF LA RAZA, LOS ANGELES MECHA CENTRAL, IMAGE, NATIONAL ASSOCIATION FOR EQUAL EDUCATIONAL OPPORTUNITY, ASSOCIATION OF MEXICAN AMERICAN EDUCATORS, JOHN VASCONCELLOS, UNITAS**

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## TABLE OF CONTENTS


Page

INTEREST OF AMICI CURIAE ..... 1

SUMMARY OF ARGUMENT ..... 4

ARGUMENT ..... 6

I. The Mexican American Has Suffered From Pervasive and Systematic Racial Prejudice Which Has Been Incorporated Into Governmental Policy ..... 6

II. The Scenario Projected By The Kerner Commission That We Are Moving 'Toward Two Nations Separate And Unequal" Is Still A Dangerous Threat To Our Society. Responsible Government Officials Must Be Permitted To Address This Threat By The Extraordinary Measure Of Affirmative Action ..... 16

A. Income ..... 19

B. Employment ..... 21

C. Housing ..... 23

D. Educational Attainment ..... 25

E. Overrepresentation in the Prison Population 26

F. Summary—Section II ..... 27

III. Apart From The General Societal Need To Overcome Decades Of Discrimination, Compelling Reasons Justify An Affirmative Action Admissions Program In Medical Schools In California .... 28

A. The Medical Profession, Absent Special Admissions Programs, Has Tended To Be Exclusively White ..... 29

B. The All White Profession Has Not Provided Minimally Acceptable Service In Minority Communities ..... 32

C. Each Community, With The Exception Of The Black Community, Served By The Special Admissions Programs At Davis, Has Unique Linguistic Needs Which Interfere With The Provision Of Adequate Medical Care ..... 36

Page

D. Mexican Americans, And The Other Represented Groups, Have Unique Medical Folkways Which, Unless Addressed By Sympathetic And Understanding Doctors, Interfere With Adequate Medical Care ..... 39

E. The Medical Consequences Of This Critical Disparity Between Need and Service In Minority Communities Are Severe ..... 43

CONCLUSION ..... 45

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Page

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Page

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### INTEREST OF AMICI *

The Mexican American Legal Defense and Educational Fund (MALDEF) was established on May 1, 1968, primarily to provide legal assistance to Mexican

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* Letters of consent from counsel for the petitioners and the respondents have been filed with the Clerk of the Court.

Americans. It is headquartered in San Francisco with additional offices in San Antonio, Los Angeles, Denver, and Washington, D.C. A major goal of the organization since its inception has been to end educational deprivation of Spanish speaking children. To this end, MALDEF has represented Spanish-speaking students in more than a dozen cases involving equal access to education. Furthermore, MALDEF has a Higher Education Task Force of experts who provide important and relevant information to the organization concerning issues in higher education.

The American G.I. Forum is a social and fraternal organization composed primarily of Mexican Americans. It had its beginnings after World War II in the aspirations of returning Mexican American veterans to end the discriminatory social, economic, and political practices that pervaded this country. The organization now has chapters nationwide. One of the main goals of the Forum is the improvement of education.

The League of United Latin American Citizens (LULAC) is also a social and cultural organization with a nationwide membership. Its history of fighting discrimination against Mexican Americans dates back to the 1920's when it fought segregation in the Texas schools. High on LULAC's agenda is the goal of assuring an adequate supply of Mexican American professionals.

The National Council of La Raza is an organization founded in the early 1970's to explicate on the national level the needs of the Hispanic community. The National Council has recognized educational and employment needs as among the most important for the Hispanic community and has worked to increase access to schools and to the labor market.



The Association of Mexican American Educators was formed in California thirteen years ago to improve the education offered the Mexican American. The membership is composed of administrators, teachers and community people who subscribe to this goal.

La Raza National Lawyers Association is a nationwide group of attorneys of Mexican American heritage. The Association is committed to working through the legal system toward equality for Mexican Americans in society; as such, it has recognized the great need for minority professionals and has worked toward increasing their number.

IMAGE is a nationwide organization of Hispanics employed by federal, state, and local governments. It is committed to greater Hispanic involvement in government and to insure greater sensitivity of government to Hispanic needs.

Los Angeles MECHA Central is an organization of Mexican American students who attend colleges and universities in Southern California. A primary goal of the organization is to reach out to younger students to encourage them to continue with their education and to provide help for students seeking to advance into the professional schools and professions.

The County of Santa Clara is a governmental entity chartered by the State of California. It has a combined minority population of 23 percent. The County has recognized the great need to move members of minority communities into policy making positions within the County and believes that affirmative action admissions programs are essential to the accomplishment of this goal.

The National Association For Equal Educational Opportunities (NAEEO) is a nationwide organization of educators in higher education involved with programs for the disadvantaged. Its primary goals are (a) to further educational opportunities for the Spanish speaking, (b) to review, evaluate and recommend legislation on equal educational opportunities, and (c) to develop institutional approaches for greater educational opportunities for the Spanish speaking.

John Vasconcellos is Chairman of the Assembly Education Subcommittee on Post Secondary Education of the California Legislature. This Committee is responsible for initiating, reviewing and monitoring legislation within the State of California concerning higher education. The Committee and Mr. Vasconcellos have been greatly concerned about the need to provide professionals to underserved minority communities and the role of the university in accomplishing this goal.

UNITAS (Berkeley) is a campus ministry organization which is part of a nationwide network of campus ministries. It is jointly sponsored by the United Methodist Church, the United Church of Christ, the Presbyterian Church, the American Baptist Church and the Disciples of Christ.

## SUMMARY OF ARGUMENT

In this brief *amici* will not provide the Court with a long discussion of the legal arguments which support the University's position. These, we know, will be well addressed by the University and by other *amici*. Instead, we will discuss what seem to us to be the overwhelming justifications for upholding this modest vol-



untary effort by the University to overcome the effects of more than a century of state sanctioned discrimination against Mexican Americans and other minority groups involved. Neither we, nor the University, argue that affirmative action programs should continue forever; however, as long as these discriminatory consequences linger, as long as these consequences translate into a lack of adequate service for these segments of the society—segments which the University has a duty to serve—then the University and indeed all governmental agencies must be permitted to maintain programs such as these.

This brief is divided into three parts. Part one outlines the abysmal history of racial discrimination against Mexican Americans in California and the Southwest.

Part two describes the gross disparities between Mexican Americans (and the other minorities affected by this program) and the Anglo majority in terms of standard of living. The disparities in terms of income, unemployment, educational levels, housing conditions, prison populations and other key indicia indicate that the Kerner Commission's projection that "our nation is moving toward two societies—separate and unequal"[1] is one that is no less true today than it was in 1968. Affirmative action programs such as the one involved in the instant litigation have been the major response of thoughtful governmental policy makers who have sought to avoid this scenario which threatens the very fabric of our society. Surely they should not be hampered in their efforts.

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[1] Report of the National Advisory Committee on Civil Disorders (1968) at p. 1.

Part three discusses the unique reasons why, in addition to those above stated, medical school admissions require affirmative programs to insure a minority presence in medical schools and in the profession. The data make clear that absent such admissions program there would be few if any Mexican American students in medical schools or in the medical profession; a major consequence has been grossly inadequate medical treatment for the State's largest minority group with its unique linguistic needs and medical folkways.

We would finally note that while this brief will concentrate on the Mexican American and on California, the story told here is one that is applicable to each of the minority groups favored by the Davis program and throughout our nation. The California experience of Mexican Americans, Asians, Native Americans and blacks is sadly similar as to the scope and pervasiveness of the state sanctioned discrimination each has suffered in other states. This unique experience makes especially appropriate the designation of these groups for inclusion in an affirmative action plan.

## ARGUMENT

### I

### THE MEXICAN AMERICAN HAS SUFFERED FROM PERVASIVE AND SYSTEMMATIC RACIAL PREJUDICE WHICH HAS BEEN INCORPORATED INTO GOVERNMENTAL POLICY.

In order to understand the discriminatory governmental policies toward Mexican Americans in California it is necessary to search for the roots of such policies. Only by an understanding of the early virulent racism which infected the State can one appreciate the magnitude and extent of subsequent discriminatory governmental policies.



The first Constitution of California was drafted in 1849 in Monterey. The record of the Constitutional Convention is high-lighted by two seemingly conflicting goals. On the one hand, a majority of the members wished to insure that only white citizens would have meaningful rights and especially, suffrage, under the Constitution; on the other hand, there was fear that an explicit limitation of rights to white citizens would result in the rejection of their application for admission to the Union.[2] An undercurrent of the desire to insure white dominance was the desire to insure that the Mexican (who was generally of Indian stock) did not interfere with the "manifest destiny" of the Anglo settlers coming from the East. The result of these conflicting objectives was the decision by the Convention to leave to the legislature the right to admit to suffrage "Indians or descendants of Indians."[3]

> The first legislature however immediately placed itself on record as restricting the right of suffrage of citizens of California to white citizens alone.[4]

Soon thereafter gold was discovered in California. Conflicts in the gold fields sharpened the ethnic division between the now legally dominant Anglo settlers from the East and the Mexican. Professor Royce, the leading chronicler of the period, has described in detail the "American settlers bigotry in the presence of

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[2] See generally, Browne, *Report of the Debates in the Convention of California on the Formation of the State Constitution*, printed by J. Towers, Wash. (1850).

[3] Constitution of the State of California (1849) Article II, Sec. 2.

[4] Heizer & Almquist *The Other California: Prejudice and Discrimination Under Spain, Mexico and the United States to 1920*, Univ. of Calif. Press, (1971), at 117.

un-American institutions and of his injustice to the conquered population."[5] This bias soon reflected itself in law with the passage of the "Foreign Miners Tax of 1850."[6] This confiscatory tax resulted in reprisals by Mexican Americans who in turn were subject to further legal sanctions:

> One famous set of resolutions, quoted in all the authorities on this affair pronounced in favor of a Committee of Three Americans in each Camp to decide which foreigners were "respectable" and to exclude all others by a sort of executive order. Other resolutions, passed in those days, and often later in various camps, excluded foreigners altogether sometimes giving the obvious intention of Providence as the reason for this brutality. There followed numerous assaults upon Mexicans and several riotous assemblages of Americans.[7]

Similarly, an anti-vagrancy law passed in 1855 specifically provided separate treatment for Mexicans, referring in the law to "greasers."[8] In summary, Royce concludes that:

> In all cases they were, as foreigners, unable to form their own government or to preserve their

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[5] Royce *California: From the Conquest in 1846 to the Second Vigilance Committee in San Francisco*, Houghton and Mifflin Co., Boston and New York (1886), p. 256.

[6] *Id.*, at 357-58.

[7] *Id.*, at 362.

[8] Cal. Stats. 1855 Ch. 175, Sec. 2. This Section states, in relevant part "All persons who are commonly known as 'greasers' or the issue of Spanish and Indian blood . . . may be disarmed by any lawful officer . . ."



> own order. And so we kept them in fear and, as far as possible, in misery.[9]

The other non-Anglo group of any number in early California was the Indian. He was not only subject to the pervasive legal discrimination which the Mexican suffered, but also was the victim of an officially sanctioned policy of genocide. Governor Peter Burnett in his annual message of January 1, 1851 stated:

> That a war of extermination will continue to be waged between the two races until the Indian race becomes extinct, must be expected.[10]

Royce also speaks of the "Massacre of the Digger Indians."[11]

These racist foundations were reflected in legislation and policies which excluded outright some minority groups from an education and from other services, and mandated segregation as to other groups. Mexican Americans to this day labor under the disabilities and realities of intentionally caused segregation.

In 1855, state law caught up with the common practice and provided that state funds for education were to be distributed "in proportion to the number of *white* children."[12] While such a provision clearly sanctioned exclusion of non-white students from schools entirely it was generally interpreted as a segre-

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[9] Royce, *supra*, at 363.

[10] Heizer & Almquist, supra, n.4 at 26.

[11] Royce, *supra*, at 363.

[12] Wollenberg, *All Deliberate Speed: Segregation and Exclusion in California Schools, 1855-1975*, Univ. of California Press, Berkeley and Los Angeles, (1976), at p. 12. (Emphasis included.)

gation statute.[13] In 1864, the law made explicit the segregation of all non-Anglos by requiring school districts to establish separate schools for "negroes, mongolians and indians" if ten or more parents petitioned to receive an education.[14] While the Civil War caused some introspection concerning the wisdom of this policy, it was reaffirmed in 1872 when the legislature mandated that the "education of children of African descent and Indian children must be provided for in separate schools."[15] In 1874, the California Supreme Court affirmed the constitutionality of this legislation and of the separate but equal doctrine. *Ward* v. *Flood*, 48 Cal. 36 (1874). In contrast to many other jurisdictions, this legal doctrine had a greater impact on sustaining legislatively mandated segregation of non-black minorities than of blacks. In 1880 the state legislature abolished for a time all racial segregation.[16] Never again were blacks to be included in *legislatively* sanctioned segregation; however, in 1885 the first of a series of new ethnic segregation statutes was passed to insure the segregation of Asians and Indians.[17] While these laws were occasionally amended, it was not until 1947 when Governor Warren signed legislation repealing the then existent statute that legislatively mandated segregation disappeared from the books of California. *See* 1947 Cal. Stat. Ch. 736 § 1. Indeed, throughout this time period the courts reiterated the

[13] *Id.*, p. 13.

[14] *Id.*, p. 14.

[15] *Id.*, p. 20.

[16] Section 1662 of the General School Laws of California (San Francisco, 1880), p. 14, reported in Wollenberg at p. 25.

[17] Wollenburg, *supra*, p. 42.



legality of the separate but equal doctrine. *Wysinger* v. *Crookshank* 82 Cal. 593 (1890); *Piper* v. *Big Pine School Dist.* 193 Cal. 664 (1924).

The Mexican American was never directly referred to in the segregation legislation. This was due primarily to the fear of causing an explicit conflict with the Treaty of Guadalupe Hidalgo, 9 Stat. 922-43 (Feb. 2, 1848) T.S. No. 207, which required the equal treatment of all Mexicans who decided to remain in the conquered territories.[18] However, school districts had no difficulty finding legal sanction for the segregation of Mexican children. Those that sought legislative justification relied upon either the "Mongolian" features or the Indian ancestry of most Mexicans to justify their segregation under the laws of the day.[19] More frequently intentional segregation was caused, not challenged, and thus no need for justification arose.

> In 1928 sixty four schools in eight Southern California counties had from 90-100 per cent Mexican and Mexican American enrollment. Three years later a survey of school districts with substantial enrollments of students of Mexican descent found that more than 80% practiced segregation.[20]

One commentator in 1920 observed,

> One of the first demands made from [an Anglo] community in which there is a large Mexican popu-

[18] The discussion during the constitutional debates concerning the disenfranchisement of all non-Anglos highlighted this concern. *supra*, n.2 at 304-07.

[19] Wollenberg, *supra*, p. 118.

[20] Wollenberg, "*Mendez* v. *Westminster*: Race, Nationality and Segregation In California Schools" 53 *Cal. Historical-Quarterly* 321 (1974).

> lation is for a separate school. The reasons advanced for this demand are generally from a selfish viewpoint of the English-speaking public and are based largely on the theory that the Mexican is a menace to the health and morals of the rest of the community.[21]

In 1947, the first successful legal attack on the segregation of the Mexican American occurred. In *Mendez* v. *Westminster School District* 64 F.Supp. 544 (S.D. Cal., 1946) *aff'd* 161 F.2d 774 (9th Cir. 1947), the Court struck down the intentional segregation of Mexican Americans in Santa Ana, holding *inter alia* that the defense that these children were in need of linguistic help was a sham. The Santa Ana situation was not isolated. A survey taken of 100 Southern California school districts in 1948 revealed that

> Seventy eight percent of the responding districts claimed that they formerly had maintained separate "Mexican" schools.[22]

Since *Mendez*, and with increasing frequency, courts have found that the segregation of Mexican Americans in California and indeed throughout the Southwest has been intentional. *See* e.g. *Soria* v. *Oxnard School District,* 386 F. Supp. 539 (C.D. Cal., 1974); *Crawford* v. *Board of Education of the City of Los Angeles* 17 Cal. 3d 280 (1976) (*De Jure* finding by trial court, affirmed on other grounds); *Hernandez et. al.* v. *Board of Education of Stockton Unified School District* Civ. No. 101016 (San Joaquin Super. Ct. Oct. 9, 1974); *see also Gonzalez* v. *Sheely,* 96 F. Supp. 1004 (D. Ariz. 1951); *Cisneros* v. *Corpus Christi I.S.D.*, 324 F. Supp. 599 (S.D. Tex., 1971) *aff'd in part, mod. in part* 467 F.2d 142 (5th Cir.) *cert. denied* 413 U.S. 920 (1972); *Morales* v. *Shannon,* 516 F.2d 411 (5th Cir. 1975); *Keyes* v. *School District No. One, Denver,* 413 U.S. 189 (1973).

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[21] Stanley, "Special Schools for Mexicans," *The Survey* (Sept. 15, 1920), p. 714. See also the discussion in Wollenberg, *supra,* n.12 at 112-113.

[22] Peters, "The Segregation of Mexican American Children in the Elementary Schools of California: Its Legal and Administrative Aspects" (M.A. Thesis: U.C.L.A. 1948), pp. 37-38.



It has been observed that "Mexicans were by far the most segregated group in California public education by the end of the 1920s."[23] Such an observation is equally appropriate today. For example, in the Los Angeles Unified School District in 1974 more than 45% of the Spanish surnamed pupils were in schools in which minorities constituted more than 90% of the student body.[24] In Oakland more than 75% of the Spanish surnamed pupils were in schools in which minorities comprised more than 80% of the population.[25] In San Francisco, notwithstanding a desegregation decree, more than 70% of the Spanish surnamed pupils were in schools with more than 70% minority enrollment.[26] These seeds of past acts of intentional segregation, along with the continuing reluctance to deal with the problem, continue to haunt the Mexican American student.

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[23] Wollenberg, *supra,* n.12 at 118.

[24] "Trends in Hispanic Segregation" (1970-1974), Vol. II, National Institute of Education, p. 76.

[25] *Id.*, p. 72.

[26] *Id.*, p. 50.

Although less well documented, public school officials have let racial considerations infect the educational experience of Mexican American children in ways other than school segregation. In their six volume study of Mexican American education, the United States Commission on Civil Rights documented subtle and not-so subtle discriminatory acts by public school officials ranging from the misclassification of Mexican American children into classes for the retarded and into non-academic tracks [27] to the bias of teachers in conducting classes.[28] In *Lau* v. *Nichols,* 414 U.S. 563 (1974), this Court recognized the obligation to provide assistance to students who could not participate in educational programs due to English language deficiencies. The Civil Rights Commission documented that in 1972, remedial reading, the most basic response to this need, "is reaching only one of five Chicano students who, by school measurements, need it." [29] See also *Serna* v. *Portales School District,* 351 F. Supp. 1279 (D. N.M., 1972) *aff'd* 499 F.2d 1147 (10th Cir., 1974).

The courts, too, have acknowledged the discrimination attendant to these issues. In California, the courts

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[27] "Toward Quality Education for Mexican Americans" *Report VI, Mexican American Education Study,* Report of the United States Commission on Civil Rights (Feb., 1974), pp. 17-33.

[28] "Teachers and Students" *Part V, Mexican American Education Study,* Report of the United States Commission on Civil Rights (March, 1973).

[29] "The Excluded Student" *Report III, Mexican American Education Study,* Report of the United States Commission on Civil Rights (May, 1972), p. 49.



have found presumptive misclassification of black students in San Francisco. *Larry P.* v. *Riles,* 343 F. Supp. 1306 (N.D. Cal., 1972) and have approved consent agreements concerning the misclassification of Mexican American students. *Arreola* v. *Santa Ana Unified School District,* Civil No. 160-577 (Orange Co. Super. Ct. Filed June 7, 1968); *Diana* v. *State Board of Education,* C-70 137 R.F.P. (N.D. Cal., June 18, 1973); *Covarrubias* v. *San Diego Unified School District,* Civil No. 70-394-S (S.D. Cal., Aug. 20, 1972).

The consequences of these acts have been predictable. In California 85.7% of Anglos reach grade 12, while only 67.3% and 63.8% of black and Mexican American children respectively achieve this level.[30] By the twelfth grade, 8.1% of Anglos read more than three (3) years behind grade level while the comparable figures for blacks are 18.9% and for Mexican Americans, 22.1%.[31]

It can certainly be argued that not all of these consequences are the product of the discriminatory acts of school officials; yet it would be equally hard, if not impossible, to isolate these consequences from the pervasive acts of segregation and discrimination which have infected education in California. A state university which is charged with providing equal access to all segments of its population, and to serve all communities, certainly must be allowed to evaluate the effect that it believes these policies have on minority

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[30] "The Unfinished Education" *Report II, Mexican American Education Study,* United States Commission on Civil Rights (Oct. 1971), p. 15.

[31] *Id.,* at 29.

communities and to compensate for them. Clearly the California Supreme Court had to be wrong when it suggested that race conscious remedies could not be voluntarily adopted to meet the consequences of these race conscious wrongs.

## II

### THE SCENARIO PROJECTED BY THE KERNER COMMISSION THAT WE ARE MOVING "TOWARD TWO NATIONS SEPARATE AND UNEQUAL" IS STILL A DANGEROUS THREAT TO OUR SOCIETY. RESPONSIBLE GOVERNMENT OFFICIALS MUST BE PERMITTED TO ADDRESS THIS THREAT BY THE EXTRAORDINARY MEASURE OF AFFIRMATIVE ACTION.

While this case on its facts is limited to an affirmative action admissions program at the Davis Medical School, justification for its existence can not and should not be limited to California medical needs or the unique characteristics at Davis. This is not to say that those needs do not present compelling justification for such a program. It is to say, however, that one cannot overlook the national conditions that have led public officials of different political persuasions to develop race conscious affirmative action programs during the past decade as a partial remedy for our legacy of racial hatred, division, and separation. On the national level, affirmative action programs have been created and enforced by presidents with as disparate political phi-



losophies as President Johnson[32] and President Nixon.[33]

Experience tells us that unless there is intervention, poverty tends to breed poverty. This intractability of poverty and all of its dire consequences seems to be especially acute for those groups whose poverty has been caused in part by racial and ethnic discrimination; possibly this is because of the lingering racial prejudice which creates and feeds the belief that minority group poverty is due to lack of ability which thus tends to justify the failure to provide opportunities to overcome poverty. Whatever the reason, government officials of all stripes have come to recognize that the extraordinary step of a racially conscious affirmative action policy is crucial to break the cycle of poverty which has afflicted those minority groups sub-

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[32] *See, e.g.*, Executive Order 11246, 30 Fed. Reg. 12319 as amended 32 Fed. Reg. 14303 and the implementing regulations 41 CFR 60-2 *et seq.* In a commencement address at Howard University in 1965 President Johnson, in supporting the need for affirmative action observed:

> You do not take a person who, for years, has been hobbled by chains and liberate him, bring him up to the starting line of a race and then say "you are free to compete with all the others" and still justly believe that you have been completely fair. Thus, it is not enough just to open the gates of opportunity. All our citizens must have the ability to walk through those gates. We seek not just freedom but opportunity. We seek not just legal equality but human ability, not just equality as a right and a theory but equality as a fact and equality as a result.

[33] *See, e.g.*, "Order Number 4" 41 C.F.R. 60-210 (1971). The Philadelphia Plan requiring affirmative action construction trades was among the many plans required by the Republican Administration. *See* history in *Contractors Association of Eastern Pennsylvania* v. *Secretary of Labor*, 442 F.2d 159, 162-63 (3rd Cir., 1971) *Cert den.* 404 U.S. 854 (1971).

ject to such prejudice.[34] These policies are generally found in the two areas where intervention seems most necessary and most likely to crack this unfortunate cycle—education and employment.[35] Without affirmative action efforts in these two areas, these governmental officials are telling us, there is little hope to remediate the shameful consequences of our history of racial and ethnic discrimination. Likewise, unless these consequences are remediated and remediated with some haste, it is recognized that they are bound to breed severe racial distrust and animosity which threaten all of our society. The California Supreme Court decision which precludes governmental officials from using racially conscious remedies to correct racially caused harm ties the hands of these officials in their reasonable efforts to deal with what may be the most serious problem facing American society.

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[34] *See* generally, *Report of the National Advisory Committee on Civil Disorders*, *supra*, n. 1; Sovern, "Legal Restraints in Employment," New York: Twentieth Century Fund (1966).

[35] *See*, e.g., Executive Order 11246 on government contractors and subcontractors; Executive Order 11478 on federal employees; *Civil Rights Act of 1964*, as amended, 42 U.S.C. § 2000e; *Rehabilitation Act of 1973*, 29 U.S.C. § 701, as amended by P.L. 93-516, 88 Stat. 1619; *Vietnam Era Veterans Readjustment Act of 1974*, 38 U.S.C. §2011-2014; *State and Local Fiscal Assistance Act of 1972* ("Revenue Sharing Act"), 31 U.S.C. 1221; *Intergovernmental Personnel Act of 1970*, 42 U.S.C. 4701; U.S. Department of Treasury, *Non-Discrimination by Recipients of Federal Revenue Sharing Funds*, 31 C.F.R. § 51.50; Civil Service Commission, *Non-Discrimination and Equal Employment Opportunity in Federally Assisted Programs of the U.S. Civil Service Commission*, 5 C.F.R. § 900.506; Secretary of Labor, *Apprenticeship training, Equal Employment Opportunity*, 5 C.F.R. § 30; and OFCCP, *Affirmative Action Programs of Government Non-Construction Contractors*, 41 C.F.R. § 60.2.



Not unexpectedly, the severe disparities in the standard of life between Anglo Americans and those most discriminated against minorities have not disappeared in the short time since the inception of these programs. The consequences of discrimination rooted in centuries will take time to overcome. Unless and until these consequences are substantially alleviated, the racial division which prompted the development of the programs in the mid-1960's will remain and the sore that gave rise to these programs will continue to fester.

In the following pages *amici* will set forth data showing that the cycle of poverty which generated affirmative action program still exists. The quality of life between Anglo and non-Anglo America is still shockingly disparate. The sore, caused and fed by racial prejudice, still festers and thus the need for racially conscious affirmative action programs still exists.

### A. Income

In 1954, the year of *Brown* v. *Board of Education*, 347 U.S. 483 (1954), the non-white family's income was 56% of the white family's income. The median annual income for a non-white American family was $3,754 in 1954 but $6,771 for a white family, representing a disparity of $3,014. By 1972, median non-white family income had increased to 62% of the white family income. However, the dollar disparity had increased to $4,443. Between 1954 and 1972 there was nationwide a 6 percentage point gain in non-white family income as a porportion of white family income, but the dollar disparity actually increased by $1,429.[36]

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[36] "Twenty Years After *Brown*: Equality of Economic Opportunity," United States Commission on Civil Rights (1975), pp. 56-58.

A more recent study shows that as of March, 1975 the median family income of white families was $11,710. the comparable figure for blacks was $6,964.[37]

In 1973, 29.6% of designated minorities, including blacks, had income below the poverty level designated by the government. The comparable figures for whites was 8.4% [38]; stated differently, almost one third of those persons who are members of minority groups live in poverty while the comparable figure for whites is one-twelfth.

A 1974 report observes that "close to one quarter (24%) of all Mexican American families in this country are in poverty, a proportion twice as great as in the general population (11%). The poverty status is exacerbated by the fact that the Mexican American family is among the largest in the United States." [39]

While statistics for California are not as complete as the national statistics, those that exist reflect a similar pattern. For example, in 1969 the per capita income of all persons with Spanish surnames was $2,252,

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[37] U.S. Bureau of the Census, Current Pop. Reports Series P-60 No. 104 "Household Money Income for 1975 and Selected Social and Economic Characteristics of Households" U.S. G.P.O. Wash. D.C. 1977, p.8.

[38] U.S. Dept. of Commerce, Bureau of Census, "The Social and Economic Status of the Black Population in the United States 1973," p.29.

[39] "A Study of Selected Socio-Economic Characteristics of Ethnic Minorities Based on the 1970 Census, Vol. 1: Americans of Spanish Origin," HEW(OS)72-209 (July 1974) at VII.



which was 60% of the $3,760 per capita income for all white persons."[40]

### B. Employment

While the nation has been greatly concerned about the increased rate of unemployment during the past several years, what is not commonly known is that white unemployment has been close to what is considered "acceptable" while minority unemployment is, by any standard, grossly unacceptable.

"The 1973 unemployment rates for negro and other races and whites were 8.9 and 4.3 per cent respectively. After declining for several years in the 1960's, the jobless rates for negroes and other races began to rise in 1970. . . . Overall in 1973 negro and other races were twice as likely to be unemployed as whites—the unemployment rate ratio was 2.1:1. Within the last 10 years, the ratio has narrowed only during 1970 and 1971 when it was 1.8:1." [41]

The plight of the Native American is even more serious. "At 14% the unemployment rate of rural male Indians is 3.6 times higher than the national rate." [42]

The unemployment rates for persons 16 and over in the labor force in 1976 were as follows: Spanish-origin

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[40] "Californians of Spanish Surname," Calif. Dept. of Industrial Relations, Division of Fair Employment Practices (June 1976).

[41] "The Social and Economic Status of the Black Population, 1973" U.S. Bureau of the Census, Current Population Reports, Special Studies Series P-23 No. 48 (Wash., D.C. G.P.O. 1974) at p.2.

[42] "A Study of Selected Socio-Economic Characteristics of Ethnic Minorities Based on the 1970 Census" Vol. III *The American Indian*, HEW (OS) 72-209, (July, 1974) at p. iii.

11.5%; blacks 13.8%; whites 7.0%.[43] While unemployment increased for all groups between 1973 and 1975, the rate of increase was substantially greater for blacks and Spanish surnamed persons. While the percentage of whites who were unemployed increased by 3.5%, the comparable figures for Spanish origin persons were 4.7% and for blacks 5.4%.[44]

Moreover, a gross disparity exists between the percentage of whites in white collar positions as opposed to blacks and persons of Spanish origin. In 1976, 51.8% of white workers were employed in white collar positions. The comparable figures for blacks were 31.6% and Spanish origin workers 32.1%.[45] A more particularized study of the employment status of Mexican Americans reports that "the proportion of Mexican American men employed in high status, professional and managerial occupations is extremely low. In the total population, 25% of all males are employed in such occupations; only one of every eleven Mexican American males (9%) is employed in these high status positions."[46] Likewise, statistics show that occupational mobility of Mexican workers does not contribute greatly to improved occupational status.[47]

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[43] *Monthly Labor Review*, "Employment and Unemployment in 1976" (Feb. 1977) pp. 11-12.

[44] McKay, "Americans of Spanish Origin In The Labor Force: An Update," *Monthly Labor Review* (Sept. 1976 at p.3).

[45] *Supra*, n.43 at 12.

[46] *Supra*, n.39 at V.

[47] "Metropolitan and Regional Inequalities Among Minorities In The Labor Market" Vol III of *Minorities in the Labor Market*, Univ. Kentucky, 1975.



Again, the California data are less complete; what we do have, however, is evidence that the above pattern is true in California. In 1969, the data show that whites were substantially more likely to be fully employed while Spanish origin workers were more likely to be employed irregularly.[48]

In sum, Spanish origin (and particularly, Mexican American) and black heads of household are much less likely to be employed and when employed are more likely to be only employed on a part-time basis. When employed, minority workers generally occupy low-paying, low-status positions.

### C. Housing

As a consequence of historical and present discrimination in the provision of housing and the more indirect but equally important discrimination which has resulted from the economic disparities above described, housing segregation is increasing at a substantial rate.

The United States Commission on Civil Rights reports that in one recent study it was shown:

> in 20 large cities, Blacks in neighborhoods in which they represented three-fourths of the population increased from 30 to 51 percent between 1950 and 1970, while the population of Blacks in mixed neighborhoods with 25 percent or less Blacks declined from 25 to 16 percent. In every one of the 47 cities with Black population in excess of 50,000, the majority of Blacks and others the

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[48] *Supra*, n.40 at 15.

overwhelming majority, lives in predominantly or solidly Black census tracts.[49]

In another report, the Commission reports that 94.3% of the suburban population in metropolitan areas of 500,000 or more residents are white.[50]

Similarly, the California Mexican American population is increasingly urban—and segregated. Earlier we cited statistics showing the extent of school segregation of Mexican Americans in California. This reflects the increasing degree of residential segregation in California.[51]

Likewise, the quality of housing that minority groups are forced to live in is grossly inadequate and substantially different from the conditions that most whites confront. In 1970, 31% of urban Mexican Americans were reported living in overcrowded units while the comparable figures for blacks were 17.5% and whites 5.3%.[52] Likewise, 6.8% of the urban Mexi-

[49] "Twenty Years After *Brown:* Equal Opportunity in Housing," United States Commission on Civil Rights at p. 124.

[50] "Equal Opportunity in Suburbia," United States Commission on Civil Rights (July, 1974), p.64.

[51] Explicit housing segregation of Mexican Americans as well as blacks and Asians was common in California. A governmental study in 1930 reported that "From an inquiry sent to realty boards in various cities of the state 47 replies were received of which number the following 24 reported segregated districts composed of Mexicans or Mexican and other foreigners (cities omitted). In addition, other boards cited clauses inserted in deeds and sales contracts calculated to confine orientals, Mexicans, and negroes to certain districts" "Mexicans in California" Report of Governor C. C. Young's Mexican Fact Finding Committee, Calif. State Printing Office S.F. (1930) at pp. 176-77.

[52] *Supra*, n.49 at 142. The Commission reports that while data for Mexicans, Native Americans and Asian Americans are often sketchy these same conditions appear to be true.



can Americans, as contrasted with 8.4% black and 2.7% white, was compelled to live in housing that lacked some or all plumbing facilities.[53] The housing situation of Native Americans is comparable. In 1970 the Bureau of Indian Affairs found that 63,000 Native Americans lived in sub-standard housing and tied such conditions to the high incidence of infant mortality and infectious diseases of Native Americans.

In sum, all evidence points to increasing segregation into substandard housing for Mexican Americans, blacks, Asians and Native Americans. This contrasts sharply with the conditions generally prevailing in white communities.

### D. Educational Attainment

In Section I, dealing with discrimination in public education, we reported the vast disparity in achievement between Mexican American pupils and white pupils. Similar disparities exist between whites and other minority groups.

A substantial and serious disparity exists between whites and blacks as to the number who have completed four years of high school. In 1974, 82% of white males between the ages of 25 and 34 had completed high school while 67.9% of blacks had accomplished this goal. The figures were similar for women of each race.[54]

[53] *Id.*, at 142.

[54] United States Bureau of the Census, *Current Population Reports*: "Educational Attainment in the United States, March 1973-74," U.S. Gov. Printing Office, Washington 1974.

> In 1970 about one quarter (22%) of Mexican Americans 16 years of age and over had graduated from high school. This is seriously below the 55% of the U.S. population who had graduated from high school.[55]

Likewise only 2.5% and 1.4% of the Mexican American males and females respectively were college graduates, compared to 12.6% of the males and 7.8% of the females in the total U.S. population.[56]

While the educational attainment of Native Americans is improving it still seriously lags behind whites. In 1970 only 42% of urban Indians and 23% of rural Indians had completed high school.[57]

### E. Overrepresentation in the Prison Population

Disparities of a different sort exist when one compares prison populations. The Anglo American population is clearly reaping the reward of its discriminatory policies.

On a national level, statistics were only available for blacks and whites. Those statistics, however, are telling. While nationally black citizens comprise 11% of the population, they comprised 42% of the total imprisoned population as of 1970.[58] These percentages

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[55] *Supra*, n. 39 at IV.

[56] *Id.*, at IV.

[57] *Supra*, n. 42 at iii.

[58] United States Law Enforcement Assistance Administration, National Criminal Justice Information and Statistics Service, *Sourcebook on Criminal Justice Statistics*, U.S. Gov. Printing Off., Washington 1974, p. 461.



held true irrespective of whether one was looking at local jails, prisons, or reformatories.[59]

In California a similar pattern can be seen for blacks, while Mexican American prison population tends to mirror their representation in society. While blacks constitute 7% of the California population,[60] they constitute 33.6% of the male felon population.[61] Indeed, while blacks and Mexican Americans constitute approximately 25% [62] of the state population, they constitute a combined percentage in excess of 52% of the male felon population.[63]

### F. Summary—Section II

The foregoing statistics clearly show that the severe racial/ethnic disparities which prompted responsible public officials to initiate affirmative action programs still exist. The determination by these officials of various political philosophies and various public responsibilities that the extraordinary remedy of race conscious programs was necessary in order to secure the public good of all citizens, must and should be respected. Until these disparities are mitigated, American society can not rest. Its public officials and private actions are in major part responsible for these dis-

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[59] *Id.*

[60] "Upgrade of the United States Census of 1970," available from the U.S. Bureau of the Census, Los Angeles, California.

[61] "Characteristics of Felon Population in California State Prisons by Institution, June 30, 1976," State of Calif., Dept. of Corrections (Aug. 19, 1976), p. 1.

[62] *Supra*, n.60. According to the "Upgrade," Mexican Americans comprise approximately 18% of the California population.

[63] *Supra*, n. 60 at 1.

parities. Certainly they now should be permitted to attempt to alleviate their consequences with racially conscious remediation.

## III

## APART FROM THE GENERAL SOCIETAL NEED TO OVERCOME DECADES OF DISCRIMINATION, COMPELLING REASONS JUSTIFY AN AFFIRMATIVE ACTION ADMISSIONS PROGRAM IN MEDICAL SCHOOLS IN CALIFORNIA.[64]

Figures developed by the University and by others reflect the stark fact that in the absence of a racially conscious admissions program both the medical schools and the medical profession would be essentially all white. This is the picture which existed before the initiation of these programs in the late 1960s and there is no reason to believe that such would not be true today; indeed, with the ever increasing crush of applicants this result seems even more likely today.

Apart from the generalized societal need to correct a severe maldistribution of membership in one of the most lucrative and influential professions in this country, there exist real and important reasons why University officials could determine that minority doctors are essential to the well being of California society. There is substantial evidence that minority populations are seriously underserved with medical care and that this has been the cause, in part, of a substantial disparity in the quality of health that exists in minority communities. While we do not suggest that only minority doctors can serve minority patients, the evidence and common sense tells us that (a) minority students and doctors are likely to bring minority concerns to the medical profession at large which will then presumably seek to correct the disparities in care, (b) minority doctors do tend to return to the communities from which they come and thus directly alleviate the underservice problem and, (c) in some instances, unique linguistic and cultural folkways may well point to the need to have increased representation in the medical profession by those who share these characteristics.

[64] In addition to the overwhelming societal need for racially conscious admission programs, there seems to be solid evidence that the pure numerical criteria so frequently used to evaluate students has a bias factor which requires a racially conscious adjustment for minority students. Evidence concerning the Medical School Admission Test (MCAT) shows that it fails to predict medical school or professional success as between students of different ethnic groups. *See, e.g.*, Brief, *Amicus Curiae* of the Black Law Students Association at the University of California, Berkeley School of Law, on file with the Court. In this regard it is worth emphasizing that those who have expressed concern that "stigma" may attach to those who are specially admitted often overlook this bias which demands an honest reappraisal of numerical factors.

### A. The Medical Profession, Absent Special Admissions Programs, Has Tended To Be Exclusively White.

Nationally, blacks comprise approximately 11.1% of the population while Mexican Americans comprise approximately 2.5%.[65] In California, blacks comprise approximately 7.6% of the population while Mexican Americans comprise approximately 18%.[66]

[65] United States Census Bureau "Selected Characteristics of Persons of Mexican and other Spanish Heritage March 1971" (Oct. 1971) p.3.

[66] *Supra*, n.60.

In 1950, black physicians constituted 2.2% of the nation's physicians. Twenty years later, in 1970, before the effect of special admissions programs could be measured, the same figure of 2.2% remained.[67] In California, blacks constitute today 2.2% of the employed physicians while Mexican Americans constitute approximately 1%.[68] Stated another way, while blacks and Mexican Americans constitute approximately 24-25% of the California population, their representation in the medical profession before the inception of special admissions programs was approximately 3%.

The California medical school statistics are starker. According to the figures developed by the University in preparation for this case, in 1965, out of 198 first year enrollees in the state's two public medical schools, there were two (2) blacks and no (0) Mexican Americans.[69] By 1968 several new schools had been opened in California and the first year enrollment had more than doubled to 400. In that year there were seven (7) blacks and one (1) Mexican American in the entering class.[70] Since the inception of special admissions pro-

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[67] Odegaard, *Minorities in Medicine: From Receptive Passivity to Positive Action 1966-76*, New York: John Macy Foundation, (1977), p. 29.

[68] Testimony of William Burnett before the California Assembly Permanent Subcommittee on Post Secondary Education, March 2, 1977, p. 38 (unedited transcript).

[69] Figures provided to MALDEF by Donald Reidhaar, University counsel, and contained in document entitled "U.C. Medical Schools, First Year Minority Enrollment 1965-68" (Apr. 22, 1977).

[70] Figures provided to MALDEF by Donald Reidhaar, University counsel, and contained in document entitled "U.C. Medical Schools, 1969-76, Entering Classes by Ethnicity" (April 14, 1977).



grams there has been a dramatic increase. In 1976, 5.6% (31) of the entering students were black, 8.6% (48) were Mexican American, .4% (2) were Native American, and 10.6% (59) were Asian."[71]

As the above figures suggest, to the extent that minority doctors existed in California before the inception of special admissions programs, they had been educated out of state. In an informal survey taken in 1977 in San Diego County, it was discovered that of the eighteen Spanish-speaking physicians in that county, only two had been educated in the United States. Likewise, of the eighteen black physicians in San Diego County all except three had gone to school out of the state. Indeed, all but four had been educated at Meharry."[72] This failure by United States schools to meet the needs of its minority population has also been reflected in a program by the Mexican government to train Mexican American students on the condition that they will return to provide medical service to underserved populations in the Southwest."[73]

In sum, there was virtually no minority representation in the medical profession prior to the inception of these special admissions programs. Given the length of time to train a physician, the benefits of these programs are just beginning to be realized. We still have

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[71] *Id.*

[72] Testimony of Mary Bush before California Assembly Education Subcommittee on Post Secondary Education, March 2, 1977, p. 52 (unedited transcript).

[73] Letter from Alfredo Ramirez Araiza, Director of International Affairs, Department of Science and Technology, The United States of Mexico, dated May 11, 1977, on file in MALDEF offices (San Francisco).

a tremendous distance to go before an approximation of adequate representation will be achieved.

Apart from the broader societal concerns above expressed, there are some critical reasons why a state medical school should be permitted to take extraordinary steps to overcome this wide disparity. In the following sections we will discuss some of these reasons. While our orientation will be toward the Mexican American community, virtually all reasons have applicability to each of the groups for whom the University determined a need for special admissions.

**B. The All-White Profession Has Not Provided Minimally Acceptable Service In Minority Communities.**

The virtually all-white medical profession has tended to serve affluent white urban areas. As one observer has noted:

> There is in the U.S. an inverse correlation between the distribution of needs and resources, particularly where health manpower is concerned. Physicians and other health professionals tend to flock to affluent areas, even though it is well known that illness is more prevalent among the poor.[74]

In California, a study by the State Department of Health has shown that this propensity of white physicians to return to affluent white areas has denied minority communities access to physicians. William Burnett testified about their findings:

> Within Los Angeles County there are large numbers of primary care physicians in affluent neighborhoods within Santa Monica, Westwood, Beverly Hills, and Hollywood Hills. You see there 809 physicians for 500,000 people, or a ratio of 618 people to one primary care physician. Principally a Caucasian area in the San Fernando Valley shows a lesser concentration of primary care physicians. However, with the primary care physician, the population ratio there is close to the ratio of 1124 people to one primary care physician used by my office, the Office of Health Professions Development. It is a benchmark for adequate care.
>
> The areas of extreme shortage of primary care physicians in Los Angeles County are almost all areas with a heavy concentration of Blacks or Chicanos. In general Los Angeles, East Los Angeles, Del Monte, La Puente, El Monte, and Pico Rivera, areas which have large concentrations of Chicanos, show ratios of people to primary care physicians that are four times greater than that in Santa Monica, Westwood, Beverly Hills. The predominantly black areas of Southeast Los Angeles and West Adams show a similar lack of primary care physicians.[75]

Thus, while one physician for 1124 persons is considered the minimally adequate ratio by the California Department of Health, persons in black and Mexican American areas, according to the study, have approximately one primary care physician for 2400 persons.

While it is most certainly not our position that minority admissions to medical school should in any way be contingent upon meeting this need, the reality is that minority doctors are more likely to practice in minority communities and most minority students

[74] "The Challenge of Equitable Access," in *Health in America* 1776-1966 (Houghton), p. 168.

[75] Testimony of William Burnett before the California Assembly Permanent Sub-Committee on Post Secondary Education, March 2, 1977, pp. 36-37 (unedited transcript).

have indicated their desire to serve the unmet needs of these communities. It also seems likely that minority presence in medical schools will serve to make white students more aware of the needs of these communities and thus spur white doctors to become concerned about these needs.

"A recent survey of 3600 graduates of Meharry Medical College reveals that some 80% of these professionals were currently practicing in such rural and urban minority communities."[76] This fact that minority physicians tend to return to minority communities and to provide primary care to those underserved populations has been frequently noted.

In a speech to the National Medical Association (NMA), the predominantly black medical association, Elliot Richardson, then Secretary of Health, Education and Welfare stated:

> It is greatly to your credit that you have concerns far beyond technical and scientific aspects of your profession. Members of the NMA also have served as forceful and articulate spokesmen on behalf of the nation's medically underserved, especially the urban poor. The NMA has played so vital a role in the evolution of this program that I need not dwell at great length upon it here today. Suffice it to say that the fight against sickle cell anemia illustrates the advances that can be made when professional organizations such as yours recognize the severe health problem and worked tirelessly to inject it into the public consciousness.
>
> Such an organizational effort on the part of physicians, it seems to me, is every bit as important

[76] Abarbenal, "After Intensive Care: Is a Relapse Ahead For Minority Medical Education?" 17 *Foundation News* 24 (Nov/Dec 1976).



> to the quality of health care in our country as are the individual efforts of physicians as practicing professional.
>
> You have worked just as tirelessly to see that enrollment of blacks in the nation's medical schools is increased so that black populations in inner cities and isolated rural areas can be better served medically."[77]

Likewise, the evidence shows that many minority students who have been admitted to medical schools plan to return to meet the needs of those communities. In a study conducted by the Association of American Medical Colleges, it was found that blacks, Mexican Americans, Native Americans and Puerto Ricans showed the highest interest in practicing in "physician shortage areas." Indeed the contrast with white students was stark and tended to show how this present disparity in medical services flows from the disparity in access to medical school. 77.9% of black married male students reported an interest in such service. 78.3% Mexican American, Native American and Puerto Rican students evinced an interest. In contrast only 41% of the comparable white students indicated an interest in serving underserved populations. Similar disparities were noted for women and unmarried students."[78]

[77] Richardson, "Urgent Health Problems," 65 *Journal of the National Medical Association* 189-90 (May 1973).

[78] Montovani, Gordon, Davis, "Medical Student Indebtedness and Career Plans 1974-75," prepared by the Association of American Medical Colleges. DHEW (HRA) 77-21 (Sept. 1976). See also 3 *Black Bag* (Journal of The Student National Medical Ass'n.) February, 1974, pp. 43-45.

Evidence of this concern can be seen by a perusal of virtually any edition of "Black Bag," the Journal of the Student National Medical Association. This association of minority medical students was founded in 1965 in order to give focus to the medical education of minority students. This focus has frequently been upon the medical needs of minority communities. Without minority students there would be no Black Bag, and history tells us, little focus.[79]

Thus it would appear that the severe lack of primary care physicians in minority communities is on its way to being met by special admissions programs for minority students. Such a program is a reasonable response by a state university to meet a critical need within the state.

**C. Each Community, With The Exception of the Black Community, Served By the Special Admissions Programs at Davis, Has Unique Linguistic Needs Which Interfere With the Provision of Adequate Medical Care.**

According to the Mexican American Population Commission of California, the Spanish surnamed population in California numbers in excess of 3.3 million,

[79] Various articles have appeared recently in which this concern for unmet minority medical needs has been expressed. *See, e.g.*, Hudson, "Sickle Cell—A Perspective," 2 *Black Bag* pp. 1-3 (March 1973); "The Student National Medical Ass'n., Inc." 3 *Black Bag* VIII (June 1974); Dennis, "A Summer Project at Eppes in Rural Alabama," 3 *Black Bag* 150 (Nov. 1974); Brantly, "Where Do We Go From Here?" 4 *Black Bag* 36 (March 1975); Hunt and Justes, "Media Review: A Textbook of Black Related Diseases," 5 *Black Bag* 34 (1976).



more than in any of the four other Southwestern states where counts were made by the Census Bureau.[80]

> Considering that the majority of Californians of Spanish surname are of foreign birth or parentage, it is not surprising that three out of every four said in 1970 that Spanish was their mother tongue. Spanish, moreover, was reported to be the language spoken in the home when they were children by 19 percent of the native born of Mexican parentage and 99 percent of those born in Mexico.
>
> Somewhat more surprising is the fact that a substantial majority—57 percent—of the native born who were not of Mexican parentage (but were mostly of Mexican origin) also reported that Spanish was their mother tongue. Moreover, a Census Bureau report based on a survey made in 1971 revealed that, for about two out of three persons in the United States who identified themselves as of Mexican origin, Spanish was not only the mother tongue, but was also a language currently spoken in the home.[81]

Thus, according to these figures, which are probably conservative,[82] at least two million, two hundred thousand (2,200,000) Californians are most comfortable in the Spanish language.

One health care worker has graphically described the problem in testimony before the Senate Subcom-

[80] "Mexican American Population in California as of April 1973 with Projections to 1980: A Biennial Census Report" Mexican American Population Commission (June 1973).

[81] *Supra*, n. 40 at 5.

[82] The Census Bureau has conceded that it appears that there has been an undercount of the Mexican population. U.S. Bureau of the Census, "Current Population Reports," P-20, No. 264, "Persons of Spanish Origin in the United States: March 1973."

mittee on Health. Describing a medical facility in East Los Angeles, an area with the third largest Mexican population in the world (after Mexico City and Guadalajara), Fernando Chevez testified that

> 85 percent of the total working force in this institution cannot understand nor speak Spanish, though about 45 percent of all the patients that enter this hospital and private hospitals within East Los Angeles are either Mexican or Mexican American. Of the 45 percent, 25 percent cannot speak English at all."[83]

A recent study of Mexican American medical students shows that they have the linguistic skills to meet these unmet needs. While fluent in English, 63% of the sample indicated that they grew up in homes where Spanish was the predominant language. Indeed, despite the pressure in school and society at large, only 15% indicated that their parents communicated among themselves in English alone."[84]

Given the dearth of Mexican primary care physicians in California it immediately becomes apparent that the State has a serious problem in providing service to these people. Even if we assume that some non-Mexican doctors are sufficiently fluent in Spanish to provide adequate medical care, these numbers and reason tell us that they cannot approximate the number of Spanish language doctors needed in California.

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[83] Hearings Before the Subcommittee on Health, Part III, pp. 2,570-2,571; reported in "Doctors & Dollars Are Not Enough," Childrens' Defense Fund, 1976 at p. 54.

[84] Kaufert, Martinez and Quesada, "A Preliminary Study of Mexican American Medical Students," 50 *Journal of Medical Education* at pp. 856, 863-64 (Sept. 1975).



The Asian and Native American communities, as well as the Mexican American community, have linguistic barriers to the provision of adequate medical care. Surely the most effective way of addressing these critical needs is to insure that qualified Mexican Americans, Asians and Native Americans are admitted to the public medical schools of the State. When one couples this linguistic disparity between most Anglo doctors and substantial numbers of the Mexican American population with the cultural disparities which inevitably must interfere with the provision of adequate medical care, one can only assume that it would have been grossly inappropriate for the Davis Medical School *not* to have a special admissions program for Mexican Americans and for the other groups singled out.

**D. Mexican Americans, and the Other Represented Groups, Have Unique Medical Folkways Which, Unless Addressed By Sympathetic and Understanding Doctors, Interfere With Adequate Medical Care.**

It is not, as previously stated, the purpose of this brief or of this section to argue that only Mexican American doctors can provide understanding and adequate service to Mexican American communities. However, it is clear that the unique linguistic and critical needs of these communities have not been addressed by an all-white medical profession. The sheer underservice of physicians in these areas tells us that. Thus, a reasoned response to the cultural problems posed by these needs is to seek out qualified Mexican Americans to take their place in the profession; as previously indicated, minority doctors are much more likely to directly meet these needs; further, their presence is

likely to awaken the rest of the medical profession to these unique needs and to thus indirectly provide solutions to the State's serious problem.

The Mexican American community's medical folkways are pervasive. The belief in herbs and folk medicine is widespread. The failure of Anglo doctors to understand and appreciate these medical folkways has frequently been cited as a significant barrier to effective medical treatment. Given what all recognize as the crucial importance of a "bedside manner" or an understanding of the psychological aspects of medical treatment, it is not surprising that this lack of understanding should translate into ineffective medical care.

A study of health care in the lower Rio Grande Valley of Texas highlighted the problem. Summarizing the findings, the author reports:

> The typical physician and nurse fail to achieve the close effective relationship with Mexican American patients which is so characteristic of curandero-client relations. The most obvious reason for this failure is the language barrier between the Anglo physician or nurse and the Mexican American patient who speaks little English. A second reason is the authoritarian relationship which the physician and nurse assume with the Mexican American patients. The patient feels that the doctor and nurse are unconcerned with his welfare, his feelings, and the obligation of his family. As a final insult, the physician may ridicule the patient's self-diagnosis made in terms of folk disease theory . . . the conservative Mexican American consults a physician only as a last resort when all other curing techniques have failed. His attitude is comparable to that of an educated Anglo who places his life in the hands of the faith



> healer when his physician has told him his disease is fatal and incurable. Even as a last resort, the Mexican American makes little attempt to understand the physician's diagnosis and treatment because he is used to carrying out orders without question in this type of role relationship with an Anglo.[85]

Similar folk beliefs and the failure of Anglo physicians have likewise been noted among urban Mexican Americans. One study showed that there was widespread belief in folk illnesses among urban Mexican Americans but that "relief for folk illness is rarely sought from physicians because of their lack of knowledge, faith, or understanding."[86] Assuming that the Mexican American patient overcomes his distrust flowing from this lack of understanding, a crucial link in medical care still has to be forged. This is the understanding by the patient of the doctor's medical plan. This link frequently is missing due to the severe gap between patient and doctor. One student has observed the problem from the patient's viewpoint.

> Though the Mexican American patient may thoroughly understand the process of diagnosis and treatment as practiced in indigenous medicine (curanderismo) or by a medical doctor in Mexico, he cannot be expected, in his anxious state, to comprehend equally well the anglo physician's

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[85] Madsen, "Society and Health in the Lower Rio Grande Valley," published in Burma, *Mexican Americans in the United States*, Schenken Pub., Cambridge, Mass. (1970) at 333-34.

[86] Martinez, C. and Martin, H., "Folk Diseases Among Urban Mexican Americans," 196 *Journal of the American Medical Ass'n.*, 161-64 (Apr. 11, 1966).

point of view, diagnostic tools and thinking, or treatment plan.[87]

Similar medical folkways play a substantial role in the treatment of the black patient. An article in the prestigious "Annals of Internal Medicine" reports:

> The folks medical system of low income Black Americans is described, from an ethnographic study of a black neighborhood in Tucson, Arizona. Comparable beliefs among Mexican Americans, Puerto Rican Americans, and Southern Whites are traced, mainly from published sources. The system is a composite of race elements of African origin of a century ago, and selected briefs from modern scientific medicine. It includes beliefs about the prevention of illness, the classification of illnesses into "natural" and "unnatural" categories, home remedies and preventive, and the ranking of healing practitioners, according to the perception of their ability, their modes of curing, and the types of illnesses they can cure. Folk medical beliefs are at odds with scientifice medicines in many respects. Medical personnel should be aware of these differences and how they might effect a patient's behavior.[88]

The article concludes that while black folk medicine is on the decline, nevertheless

[87] Laurie, H. and Lawrence, G., "Communications Problems Between Rural Mexican American Patients and Their Physicians: Description of a Solution," 42 *American Journal of Orthopsychiatry* 779 (Oct. 1972).

[88] Snow, "Folk Medical Beliefs and Their Implications For Care of Patients: A Review Based on Studies of Black Americans", 81 *Annals of Internal Medicine* 89 (July 1974); see also, Choctaw, "Another Alternative?" 1 *The Black Bag* 49-58 (Oct. 1972); Mitchell, "Evaluation" A Need for Awareness of Cultural Differences in Minority Groups," 65 *Journal of the National Medical Association* 120-22 (Mar. 1973).



> For some time to come, therefore, physicians practicing in the inner-city or rural areas will need some knowledge of folk medicine to be able to assess how the diagnosis and subsequent advice is likely to be interpreted by patients.[89]

Similar folk beliefs, possibly to a greater extent than above described, are held by Asians and Native Americans.

**E. The Medical Consequences of This Critical Disparity Between Need and Service in Minority Communities Are Severe.**

The disparity in the quality of health between white Americans and members of minority groups is startling. While the entirety of the disparity can not be blamed on the lack of compatibility between physicians and minority populations it would be irresponsible to deny a significant correlation. Indeed, it is noteworthy in this regard that the disparity transcends the correlation between poverty and race. Statistics show that:

> In general, the health condition of persons of races other than White is less favorable than that of the White population, regardless of residence in poverty or non-poverty areas.[90]

Charts presented to the annual meeting of the American Public Health Association charted the relative health of Orientals, Native Americans, blacks and Mexican Americans as contrasted with white Americans. These figures showed that the white female has

[89] *Id.*, at p. 95.

[90] "Selected Vital and Health Statistics in Poverty & Non-Poverty Areas of 19 Large Cities, United States 1969-71," U.S. Dept. of Health, Education and Welfare. D. HEW (HRA) 76-1904 (Nov. 1975), p. 5.

a life expectancy which is more than six (6) years longer than the non-white females. White males have a life expectancy which is almost seven (7) years greater than non-white males (68.0 years v. 61.3 years).[91] The longer life of whites is also substantially different in terms of freedom from disability. While the white female is likely to spend 7% of her life with a disability, her non-white counterpart will spend 9% of her life disabled. The white male will be disabled 7.5% of his life while the non-white male will be disabled 9.8% of his life.[92] Whites are substantially less likely to have chronic conditions than non-whites. 39.9% of whites of all ages had one or more chronic conditions while the comparable figures for non-whites was 50.8%.[93] Since chronic conditions generally are the accumulation of years of abuse and non-treatment, statistics showing the relative number of days per year of disability from acute and chronic conditions for different age levels are particularly significant. While whites at age levels below twenty-five on an average are more frequently disabled, this pattern changes dramatically for persons age 25-44 and the disparity increases as persons get older. Non-whites age 25-44 are on an average disabled for 19.1 days per year while whites are disabled 12.6 days. By age 75 and over non-whites are on an average disabled for 66.3 days per year while whites are dis-

[91] *Minority Health Chart Book,* American Public Health Assn. (Oct. 1974), p. 33.

[92] *Id.*, p. 34.

[93] "Health Characteristics By Color: Vital and Health Statistics," Series 10, No. 56, Nat'l Center for Health Statistics, U.S. Dept. of HEW, 1969, p. 7, reported in publication cited *supra,* n. 91 at 41.



abled for 40.2 days, a difference of twenty-six days or almost a month per year.[94]

While statistics for Mexican Americans, as separate from other non-white groups, are limited, what does exist shows that Mexican Americans follow the pattern of other non-whites. A study in Colorado shows that the mean age of Spanish-surnamed persons living more than one year is 56.73 years while the comparable figure for all others was 67.46, a difference of more than eleven years.[95] Likewise, Mexican Americans were substantially more likely to suffer from influenza, pneumonia, and ordinary accidents requiring medical attention.[96]

In sum, a consequence of this medical neglect has been a substantially reduced life span for non-white citizens and a life span that encompasses more than its share of suffering from lack of health.

## CONCLUSION

In the latter part of the 1960's the Medical School at the University of California, Davis, along with virtually every other respected college and university in the nation instituted racially conscious affirmative action admissions programs to overcome the virtually

[94] "Disability Days, United States, 1971," United States Dept. of HEW, National Center for Health Statistics, Series 10, No. 90, Table 13, p. 30, reported in publication cited *supra,* n. 91, p. 60.

[95] Moustafa and Weiss, "Mexican American Study Project, Health Status of Practices of Mexican Americans" School of Public Health, U.C.L.A., Division of Medical and Hospital Admin. (Feb. 1968), p. 6.

[96] *Id.*, p. 6.

all-white composition of their student bodies. This was in recognition of several realities. First, it was recognized that traditional criteria for admissions, normed as they were in an earlier time when only a select few were college bound, provided an inappropriate measure of the ability of minority students; secondly, to the extent that traditional criteria were appropriate the failures by minority students were in significant part attributable to this nation's sad legacy of discrimination. Thirdly, the failures to "mainstream" the victims of discrimination into the professions and indeed into all but the lowest segments of American life had resulted in a lack of adequate service to segments of society; finally, along with other governmental entities, universities came to realize that unless strong steps were taken quickly, this nation could not withstand the divisiveness of separate and unequal societies. They came to realize that even if the terrible disparities between white and non-white society did not re-erupt into violence as in the late 1960's, another danger was inevitable. The National Advisory Commission on Civil Disorders observed that this was "the danger of a conclusive repudiation of the traditional ideals of individual dignity, freedom and equality of opportunity" and further observed that "we will not be able to espouse these ideals meaningfully to the rest of the world, to ourselves, to our children. They may still recite the Pledge of Allegiance and say 'one nation . . . indivisible'; but they will be learning cynicism not patriotism."[97]

Thus, it was in recognition of these realities that responsible governmental entities created racially con-

[97] *Report of The National Advisory Commission on Civil Disorders* (March 1, 1968), at 226.



scious affirmative action programs. If the California Supreme Court decision is allowed to stand, it will effectively prevent government officials from taking these modest voluntary efforts to overcome the serious consequences of discrimination. They should not be so thwarted.

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